

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

IN RE:)
)
CHISM HOLT) Case No. 19-15053
)
Debtor.)

**AMENDED COMBINED MOTION FOR RELIEF FROM AUTOMATIC STAY
AND ABANDONMENT AND WAIVER OF THE FOURTEEN (14) DAY STAY UNDER
RULE 4001(a)(3) AND BRIEF IN SUPPORT THEREOF
AND NOTICE OF OPPORTUNITY FOR HEARING**

Comes now Great Plains National Bank (herein "movant"), as a creditor of Debtor, and moves pursuant to §362 for relief from the automatic stay and pursuant to §554 for abandonment so as to permit movant to initiate litigation to recover the balance due on loans made to Debtor and to foreclose mortgages and security agreements given by him as security for repayment thereof encumbering any interest of the Debtor in the property described below.

In support thereof movant states as follows:

(1) Movant has two claims against Debtor identified below:

i. Loan No. ****7394 evidenced by a promissory note on which Debtor is a borrower with an unpaid balance of \$92,109.35 principal, accrued interest and late charges as of January 9, 2020, and interest at 8.75% per annum thereafter plus attorney fees and expenses secured by a first mortgage filed July 11, 2017, in book 1337 at page 487 in the office of the Washita County Clerk encumbering the following real estate:

A tract of land in the NW/4 of Section 25-T9N-R16W, WIM, Washita County, Oklahoma, beginning at the Northwest corner of said NW/4; thence North 89 degrees 30'20" East on the North line of said NW/4 a distance of 265.00 feet; thence South 00

degrees 13'37" West and parallel with the West line of said NW/4 a distance of 450.00 feet; thence South 44 degrees 51'58" West a distance of 71.15 feet; thence South 89 degrees 30'20" West and parallel with North Line of said NW/4 a distance of 215.00 feet to a point on the West line of said NW/4; thence North 00 degrees 13'37" East on the West line of said NW/4 a distance of 500.00 feet to the point of beginning, and a second mortgage filed on March 7, 2018, in book 1347 at page 935 in the office of the Washita County Clerk encumbering the following real estate:

Lot 5 In Block 22 of the Original Town of New Cordell, Washita County, Oklahoma, according to the duly recorded plat thereof

Lot 5 In Block 34 of the Original Town Of New Cordell, Washita County, Oklahoma, according to the duly recorded plat thereof

A tract of land in the NW/4 of Section 25-T9N-R16W, WIM, Washita County, Oklahoma, beginning at the Northwest corner of said NW/4; thence North 89 degrees 30'20" East on the North line of said NW/4 a distance of 265.00 feet; thence South 00 degrees 13'37" West and parallel with the West line of said NW/4 a distance of 450.00 feet; thence South 44 degrees 51'58" West a distance of 71.15 feet; thence South 89 degrees 30'20" West and parallel with North Line of said NW/4 a distance of 215.00 feet to a point on the West line of said NW/4; thence North 00 degrees 13'37" East on the West line of said NW/4 a distance of 500.00 feet to the point of beginning,

ii. Loan No ****2168 evidenced by a promissory note on Debtor is a borrower with an unpaid balance \$82,520.75 principal, interest and late charges as of Janaury 9, 2020, and interest at 6.50% per annum thereafter plus attorney fees and expenses secured by a first mortgage filed on January 24, 2017, in book 1329 at page 270 in the office of the Washita

County Clerk encumbering secured by a first mortgage on the following real estate:

Lot 5 In Block 22 of the Original Town of New Cordell, Washita County,
Oklahoma, according to the duly recorded plat thereof

Lot 5 In Block 34 of the Original Town Of New Cordell, Washita County, Oklahoma,
according to the duly recorded plat thereof

and a security agreement dated January 21, 2017, perfected by title lien entries on the
following personal property:

GMC 1980 truck VIN T19CCAV608631

Ford 1964 Truck VIN U91VVT25768

(2) 11 U.S.C. §362(d)(2) provides that, upon the request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under §362(a) by terminating, annulling, modifying, or conditioning such stay if the debtors do not have any equity in the property at issue and the property is not necessary to an effective reorganization.

(3) Movant is not adequately protected in its collateral, and Debtor has no equity therein.

(4) Movant seeks an order of this Court granting relief from the automatic stay and abandonment of property of the Debtor to allow Movant to initiate litigation to recover the balance due on loans made to Debtor on an *in rem* basis only and to foreclose mortgages and security agreements given by him as security for repayment thereof.

(5) The Debtors have claimed none of the property on which movant holds a first mortgage or security interest exempt and has affirmatively stated his intent to surrender the real estate.

(6) The Debtor has not listed the vehicles as assets.

(7) This is not a reorganization case, so the property is not necessary to any reorganization of the Debtor.

(8) Based on the allegations herein, cause exists for the waiver of the fourteen (14) day stay under Bankruptcy Rule 4001(a)(3).

(9) Movant moves for waiver of the fourteen (14) day stay under Bankruptcy Rule 4001(a)(3).

(10) Each interested party is advised as follows:

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 no later than fourteen (14) days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned Movant/Movant's attorney and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice.

The fourteen (14) day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

WHEREFORE, movant moves for the entry of an order modifying the automatic stay to allow movant to initiate litigation to recover the balance due on loans made to Debtor and to foreclose mortgages and security agreements given by him as security for repayment thereof and waiver of the fourteen (14) day stay under Bankruptcy Rule 4001(a)(3) to (i) obtain judgment *in rem* against Debtor for the amounts for which she is indebted on the loans herein described, (ii) enforce its mortgages and security interests, and (iii) determine any deficiency remaining against Debtor on

condition that no collection actions be taken against her if she is granted a discharge or while this case is pending and further directing abandonment of any interest of the Debtor as to which relief is granted and for such other and further relief as the Court may deem just and proper.

s/ Donald P. Ferguson
Donald P. Ferguson, OBA #2872
Attorney for Movant
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Chickasha, Oklahoma 73018
Phone: (405) 224-4755
Facsimile: (405) 224-4752
donpferguson@sbcglobal.net

CERTIFICATE OF SERVICE

I, Donald P. Ferguson, hereby certify that on March 16, 2020, a true and correct copy of the Motion to which this Certificate is attached was served electronically by using the CM/ECF system upon those parties listed on the attached Exhibit A and mailed, postage prepaid, to each the persons named on the attached Exhibit B which include the the Debtor, Debtors' counsel, the trustee, the United States Trustee, any parties affected by the motion or having an interest in the property affected by the motion, and all parties in interest who have requested notice in the case.

s/ Donald P. Ferguson
Donald P. Ferguson